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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

THE PURDY COMPANY,
Petitioner-Appellant Below,

vs.

ARGENTINA, a foreign state, and DIRECCION GENERAL FABRICACIONES MILITARES OF ARGENTINA,
Respondents-Appellees Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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No.

THE PURDY COMPANY,

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vs.

ARGENTINA, a foreign state, and DIRECCION GENERAL FABRICACIONES MILITARES OF ARGENTINA,

Respondents-Appellees Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To The Honorable The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Petitioner, The Purdy Company, respectfully prays for the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered on June 11, 1964.

OPINION BELOW.

The decisions of the United States District Court for the Northern District of Illinois, Eastern Division, vacating a default judgment entered against Argentina and dismissing Argentina and Direccion General De Fabricaciones

Militares Of Argentina (hereinafter referred to as "DGFM") are unreported. Copies of the Orders are found at pages 26 and 37 of the Joint Appendix. (JA 26, 37). The decision of the United States Court of Appeals for the Seventh Circuit is reported at 333 F. 2d 95 (7 Cir., 1964).

JURISDICTION.

The judgment of the Court of Appeals was entered on June 11, 1964. Rehearing was denied on July 14, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Pursuant to the policy of the United States Department of State to allow suits against foreign governments acting in their commercial capacity, is a foreign government and its department amenable to suit in a Federal Court of the United States for its breach of a commercial contract?

2. Are the federal courts competent to hear a suit against a foreign government in a commercial action when *in personam* jurisdiction was sought by service of process upon the Argentine Counsul in Chicago, who is the commercial representative of his government, and when that Consul rendered continuous and continuing services which were a required condition precedent to performance of the particular commercial contract sued upon?

3. Is a foreign defendant who entered into a contract with an Illinois corporation calling for final payment in Illinois by means of a letter of credit, adopting all of the terms of the underlying contract, established by the respondent upon an Illinois bank and whose representatives rendered final approval in Illinois subject to the jurisdiction of the Illinois courts?

CONSTITUTIONAL AND STATUTORY LAW INVOLVED.

Article VI, Clause 2, Constitution of the United States:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The *Tate Letter*, 20 Dept. of State Bull., 984 (1952), (See Appendix pp. 10-13a) for text.

Chapter 110, Ill. Rev. Stats., Sec. 17(1)(a) (1964):

> "Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts;
>
> "(a) the transaction of any business within this State;"

STATEMENT OF THE CASE.

This is an action brought by petitioner, The Purdy Company, to recover the balance of the consideration due and owing from respondents, Argentina and DGFM, pursuant to the terms of a commercial contracts under which petitioner commercially sold and delivered steel to respondents.

The facts are undisputed. On or about November 14, 1955, petitioner, The Purdy Company, entered into a commercial contract for the sale of steel to defendants DGFM

and Argentina by and through its department DGFM. (JA 15) The contract required respondents to establish an irrevocable letter of credit in favor of the petitioner upon The First National Bank of Chicago, Chicago, Illinois, as a necessary condition precedent to the shipment of steel. (JA 15)

Payment was to be made in American dollars (JA 16) to the petitioner at Chicago by means of respondent's letter of credit. (JA 17) Another required condition precedent was that the Argentine Consul duly legalize and approve invoices and other documents that petitioner had to submit to him before payment could be made. (JA 17) Pursuant to respondents' requirements, documents were submitted to the Argentine Consul in Chicago at the Consulate in Chicago, Illinois. (JA 35) At a continuous series of at least ten separate meetings between the Argentine Consul and petitioner's representative in Chicago (JA 35) the Consul would inspect the documents that the contract required to have consular approval and imprimatur. (JA 35) The Argentine Consul would approve and certify these documents. On occasion, finding the papers unsatisfactory, the Consul would refuse approval until the modifications he required were completed. (JA 35-36) After the documents had been approved the Argentine Consul in Chicago would retain and forward them to the appropriate authorities. (JA 36) Only after approval by the Argentine Consul would The First National Bank of Chicago make partial payments to the plaintiff pursuant to the credit established by the respondents. (JA 36) Despite the complete performance of all of the terms by the petitioner, and despite the fact that delivery was made to and accepted by respondents, they have wrongfully refused to fulfill their commercial contractual obligations and have wrongfully refused to pay the bal-

ance of $58,997.63 owing under the contract and the $27,912.14 demurrage due petitioner.

At the inception of this action, service on both defendants was made upon the Argentine Consul in Chicago who acted under the contract. (JA 9) No answer was ever filed by either respondent. Instead, a letter from the Argentine Minister was received by the District Court on February 14, 1961 (almost four months after defendants were in default for failure to answer). In this letter certain questions about the sufficiency of process were raised although the Argentine Minister readily admitted that the Argentine Consul in Chicago had "notified me opportunely of the complaint filed in this action". (JA 10)

On March 8, 1961, a motion on behalf of DGFM to quash service of process upon the Argentine Consul as to it was sustained. The court authorized the issuance of an alias service of summons upon that defendant. (JA 22, 23) Alias service of summons was served by delivering a summons and complaint to a duly authorized agent of respondent, DGFM, at its home offices in Buenos Aires pursuant to 110 Ill. Rev. Stats., Sec. 17(a), (JA 24, 25). Defendant DGFM's motion to quash this alias service was granted. (JA 27)

Throughout the entire proceedings Argentina had filed no appearance or answer and was, therefore, in default. On September 12, 1963, the District Court, despite various "suggestions" filed by Argentina, (JA 43, 44, and 46) found that "Summons and Complaint having heretofore been personally served on said defendant", directed that default judgment in the amount of Eighty-Six Thousand Nine Hundred Nine and 77/100ths Dollars ($86,909.77) be entered against Argentina. (JA 31, 32)

Thereafter, Argentina finally filed what it termed a "special appearance" and on its motion the District Court vacated the default, quashed service of summons, and dismissed this action. (JA 37, 38)

BASIS FOR FEDERAL JURISDICTION.

The jurisdiction of the federal court in this matter is authorized pursuant to 28 U.S.C., Sec. 1332(2), specifically providing for actions brought by a citizen of a state against foreign states and subjects thereof.

REASONS FOR GRANTING THE WRIT.

I.

THE RECENT RECOGNITION BY THE DEPARTMENT OF STATE OF THE NEED TO ALLOW SUITS AGAINST FOREIGN SOVEREIGNS (THE TATE LETTER POLICY) HAS BEEN FRUSTRATED BY THE DECISION BELOW.

It is clear and beyond dispute that the present and modern scope of United States' policy concerning sovereign immunity now allows foreign governments to be sued without consent for breaches of commercial obligations. This policy has been well established by the Department of State in the famous *Tate Letter*, 26 Dept. State Bull. 984, 985 (1952) (App. 10a-13a):

> "The department has now reached the conclusion that such immunity should no longer be granted in certain types of cases.
>
> • • •
>
> "Finally, the Department feels that *the wide spread and increasing practice on the part of governments of engaging in commercial activities makes necessary a practice which will enable persons doing business with them to have their rights determined in the courts.* For these reasons it will hereafter be the department's policy to follow the restrictive theory of Sovereign Immunity in the consideration of requests of foreign government for a grant of Sovereign Immunity." (Emphasis added.)

See also, *Stephen* v. *Zivnostenska Bank National Corp.*, 222 N.Y. Supp. 2d 128, 133; 15 App. Div. 2d 11 (S.C., App. Div. 1961) where, in a letter, the Department of State reiterated that there was no immunity for a sovereign's

commercial acts, and that it was appropriate for the Court to hear the suit.

Since the issue of allowing suits to proceed against foreign sovereigns is primarily a political question involving foreign policy conducted *solely* by the federal government, this Court had held that the policy of the Department of State is entitled to great weight. *National City Bank of New York* v. *Republic of China*, 348 U. S. 356, 360 (1955); and *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 36 (1945).

Despite respondents' request (JA 10), the Department of State has *not* suggested that they are entitled to immunity for consequences of their commercial activities (Opinion, p. 3, f.n. 2, 333 Fed. 2d 95, 97, f.n. 2). This position is entirely in accord with the Department's restrictive policy of sovereign immunity.

Pursuant to the Department of State's position the courts have unanimously held that foreign sovereigns are amenable to suit for their breach of commercial transactions. In *Et Ve Balck Kurumu* v. *B.N.S. International Sales Corp.*, 25 Misc. 2d 299, 204 N.Y. Supp. 2d 971, 976-977 (S. C. Spec. Term N. Y. County, 1960) *aff'd* Unam. Memo Dec. 233 N. Y. Supp. 2d 1013 (S. C. App. Div. 1962) it was held that the sale of meat to the Turkish Army was a commercial activity for which suit could be brought. See also Proposed Official Draft, *Restatement of the Foreign Relations Law of the United States*, Sec. 72 (1962), *Pacific Molasses Company* v. *Comite de Ventas de Miles de la Republica Dominicana*, 30 Misc. 2d 560, 219 N. Y. Supp. 2d 1018 (Sup. Ct. Term, N. Y. County 1961); *Three Star Trading Co.* v. *Republic of Cuba*, 222 N. Y. Supp. 2d 675 (Sup. Ct. Special Term N. Y. County 1961); *Mirabella* v. *Banka Industrial de La Republica Argentina*, 237 N. Y.

Supp. 2d 499 (Sup. Ct. Special Term, N. Y. County 1963), all allowing suit in commercial activities.

The doctrine of allowing suits against foreign sovereigns, an imporant innovation in our foreign policy, was necessitated by the "widespread and increasing practice" of foreign commercial dealings. Tate Letter (App. 13a). The *Tate Letter* represents a policy designed to give protection to the ever-increasing number of domestic enterprises now engaging in commercial dealings with foreign sovereigns without sacrificing uniformity in foreign relations.

It is clear, however, that to effectuate the Department of State's policy protecting domestic enterprises there must be some way to bring a foreign sovereign into court. There can be no suits if service of process is impossible. This interrelationship of restrictive immunity and the need for methods of service of process is succinctly stated by Dean Griffin, a former attorney in the office of the Legal Advisor to the Department of State, in *Adjective Law and Practice in Suits Against Foreign Governments*, 36 Temple L. Q., 1, 5, [1962]:

> "Removal of the absolute doctrine as a barrier to suit means that the necessity of obtaining jurisdiction . . . will arise in every such case. Therefore, unless a foreign government engaging in *jure gestionis* activities voluntarily submits to the jurisdiction of local courts, the only alternative to frustration of the restrictive doctrine is to submit such government to local procedures for obtaining jurisdiction.
>
> "*Moreover, the restrictive doctrine itself seems to contemplate the subjection of foreign governments to local rules for obtaining jurisdiction.* The rationale of the restrictive doctrine is that a government engaging in activities open to private persons submits itself in foreign territory to the same rules

that there govern relations among private persons. Surely such local rules include not only those governing substantive legal liability but also the rules of adjective law which are prerequisite to legal power to render judgment on the merits." (Emphasis added.)

To say that a foreign government is subject to suit but at the same time to hold there is no way to obtain jurisdiction without their consent (as respondents repeatedly urged below[1]) is simply to rephrase and revitalize the repudiated doctrine of absolute immunity in different language.

Yet, the decision of the Court of Appeals has done just that. It is virtually impossible under its decision for private corporations having commercial dealings with foreign sovereigns to obtain redress in the courts. The right to sue is left without remedy.

Apparently recognizing the grave difficulties created by holding no *in personam* jurisdiction permissible, the Court attempted to mitigate the harshness of the decision

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[1] The only authority respondents cited for this novel position is a brief filed by the Department of Justice in *Hellenic Lines, Ltd.*, v. *Luke C. Moore*, No. 18,265 (D.C., Cit. 1964) where at page 22 they state the policy of restrictive immunity is "illusory" because of the impossibility of obtaining jurisdiction. Far from representing the government position, the Department of Justice, merely a party litigant in *Moore*, completely opposes the Department of State's rejection of this outmoded doctrine, as noted in Timberg, *Sovereign Immunity, State Trading and Self Deception*, 56 Nw. L. Rev. 109, 124 (1961): "The Justice Department has a predilection for the doctrine of absolute sovereign immunity, and in effect becomes *amicus curiae* for foreign governmental agencies or corporations pleading sovereign immunity as a defense to a contract or tort action." Even as an independent grounds, this Court should grant the writ to resolve the conflicting policies of the Departments of Justice and State.

by suggesting two alternative methods of suit (Opinion, page 3, 333 F. 2d 97).

The Court first suggested that jurisdiction could be obtained if the foreign sovereign were to bring an action in which a counterclaim might be filed. However, in all situations under the Tate Letter it is the *foreign sovereign that has breached the contract.* There is little reason to expect the party in default to bring suit. The purpose of the *Tate Letter* was to allow the aggrieved party to sue and not wait upon the pleasure of the defaulting government. No jurisdiction is obtainable under this alternative.

The Court also suggested that *in rem* or *quasi in rem* jurisdiction might alleviate the dilemma. Following the pronunciation of the *Tate Letter* (including when petitioner brought suit), the Department of State adhered to the position that attachment of property to obtain jurisdiction (the only method to bring an *in rem* action. *Developments in the Law. State Court Jurisdiction.* 73 Harv L. Rev. 909, 950) was not allowed. E.g. *New York & Cuba Mail Steamship Company* v. *Republic of Korea.* 132 F. Supp. 684 (S. D., N. Y. 1955). Since the Department of State maintained both the position that suits were allowable against foreign sovereigns, but that attachment was not an acceptable method, the intent of the Department of State must be to allow *in personam* jurisdiction. Dean Griffin has concluded "There can be no such practice [suits in commercial cases] until it is possible to obtain jurisdiction over foreign governments by *service of process.*" Griffin. *Adjective Law and Practice in Suits Against Foreign Governments.* 36 Temple L. Q. 1, 14 [1962] (Emphasis added.)

Petitioner prays that this Court grant the writ so that the Decision below, which leaves no effective means to

obtain jurisdiction against foreign governments and frustrates the policy of the Department of State, may be reviewed.

II.

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT.

The Court of Appeals predicated its refusal to allow *in personam* jurisdiction against foreign governments on the assumption that *in rem* jurisdiction is obtainable. (Opinion, page 3, 333 F2d 95, 97). Not only does that position frustrate the intent of the Department of State but it also directly conflicts with holdings of this Court.

In rem jurisdiction arises *solely* as a matter of *state* law. There is no independent federal *in rem* jurisdiction, 2 Moore, *Fed. Practice* par. 4.19, pages 1078-1079 (1964). While it is true that under the 1963 Amendments to Rule 4(e) (2) Fed. R. Civ. P., *in rem* actions may be initiated in federal courts, those preceding can only be made "Whenever a statute or rule of control of the *State*" provides. *In rem* jurisdiction can only be made pursuant to *State* rules. Griffin, *Adjective Law and Practice in Suits Against Foreign Governments,* 36 Temple L. Q. 1, 7 (1962). There is no independent federal means. The Court of Appeals is thus holding that foreign states are suable only under *state* law.

Yet this Court has held in clear and unequivocal language that suits against foreign states are *exclusively* matters of *federal law. Banco Nacional de Cuba* v. *Sabbatino,* 376 U. S. 398, 425 (1964).

> "However, we are constrained to make it clear that an issue concerned with a basis choice regarding the competence and function of the judiciary and National Executive *in ordering our relationship with*

> *other members of the international community must be treated exclusively as an aspect of federal law.*
>
> "[R]ules of international *law should not be left to divergent and perhaps parochial state interpretations.*" (Emphasis added).

Or in *U. S.* v. *Pink,* 315 U. S. 203, 232 (1941):

> "Here, we are dealing with an *exclusive federal function.* If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted. These are delicate matters." (Emphasis added.)

See also Henkin, *The Foreign Affairs Power of the Federal Courts; Sabbatino* 64 Colum. L. R. 805, 811 (1964); and Keefe, *International Conflicts of Laws,* 50 A.B.A.J. 593, 595 (1964).

Nor is the holding of this Court that foreign affairs is to be treated *solely* as a matter of federal law unique or surprising. This Court has often held that matters of exceptional federal concern fall within small enclaves of exclusive federal law. *Banco Nacional de Cuba* v. *Sabbatino,* 376 U. S. 398, 426; *Clearfield Trust Co.* v. *U. S.,* 318 U. S. 363; *Hinderlider* v. *LaPlatta River Co.,* 304 U. S. 92, 110; and Friendly, *In Praise of Erie—and The New Federal Common Law,* 19 Record of the N.Y.C. B.A. 64, 83-92 (1964). Matters involving the conduct of foreign affairs are conducted solely by the federal government and within its sole domain. U. S. Constit. Art. VI.

The assumption of the Court of Appeals that *in rem* jurisdiction is available, conflicting as it does with the commandments of this Court, subjects foreign states, and, our foreign policy, to far more harassment and difficulty than does a rule of uniform federal *in personam* jurisdiction. Under the Court of Appeals' decision, foreign

states are subjected to 50 different procedures to acquire jurisdiction; 50 different methods of attachment; 50 different interpretations of "commercial property" and the decision below replaces the close adherence of our federal courts to policies of the Department of State, under the unifying control of this Court, to 50 different state reactions to our national foreign policy. As noted in Leonard, *The United States as a Litigant in Foreign Courts*, 1958 Proc. American Soc. of Int. Law, 95, 98 (April 1958):

> "The desirability of a *uniform* rule in this field is apparent. The essential element is notice to a sufficiently high echelon of the government concerned, so that prompt and effective action can be taken."

Respondents admit that the Consul gave prompt notice (JA 10).

Moreover, the difficulties of only allowing state *in rem* proceedings are already visiting themselves upon foreign governments. In *U. S.* v. *Harris & Co. Advertising, Inc.*, 149 So. 2d 384 (Dist. Ct. of App. Fla. 1963), it was held that a foreign government had entered its plea of sovereign immunity too late to prevent the execution upon its property. The Court held that the government's plea of sovereign immunity, supported by the Department of Justice *and the Department of State*, would not be accepted.

Under the decision of the Court of Appeals, the ability to bring suit against foreign sovereigns is torn between conflicting evils of either not being able to obtain jurisdiction or of relegating our foreign affairs to "parochial" and "divergent" attitudes of State courts and Statutes.

III.

THE DECISION OF THE COURT BELOW IS NOT SUPPORTED BY AUTHORITY.

The decisions cited by the Court of Appeals do not compel or support the result that was reached in the decision below.

The Court placed its primary reliance on *Oster* v. *Dominion of Canada*, 144 F. Supp. 746 (N.D. N.Y. 1956), *Aff'd per curiam* 238 F. 2d 400, *cert. den.*, 353 U. S. 936. That case involved a suit for damages resulting from the maintenance of a dam by the Canadian government along the New York-Canada border. Service was attempted by leaving a summons with the Canadian Consul at the Canadian Consulate in New York City. This service was held insufficient because the authority of the Consul was "limited by the terms [of his appointment] to the protection of the interests of the Canadian citizens within his consular district." In essence the sole contact with the suit of the Canadian Consul in *Oster* was the purely fortuitous circumstances of receiving service in an action in which he had no other involvement.

The position of the Argentine Consul in Chicago is very different. The very terms of the purchase order upon which suit is brought required that he approve documents as a *condition prerequisite* to final performance. In fact it was the Argentine Consul in Chicago who, in a continuous series of meetings examined, approved, and modified the documents as the contract required. (JA 17, 18).

The decision in *Oster* has been the subject of much criticism (Niehauss, *Comments, International Law-Sovereign Immunity—The First Decade of the Tate Letter Policy*, 60 Mich. L. R. 1142 [1962]), but it is clear that

whatever doubtful validity *Oster* may have to the factual situation there involved, that case should have no application to the entirely different situation at bar.

It should also be noted that *Oster* involved no commercial dealings on the part of the Canadian government. This Court has observed that while a foreign consul has no authority to act in sovereign matters [the operation of a dam], as the commercial representative of his government, he has *commercial* authority. As stated in *The Anne,* 3 Wheat 434, 445 (1818):

> "A consul, though a public agent, is supposed to be clothed with *authority only for commercial purposes.*" (Emphasis added.)

In Lee, *Consular Law and Practice,* N. Y. (1961), 59, it is stated that:

> "A consul performs only *actes de gestion* including a state's undertakings of *commercial* activities;".

Moreover, in *Oster* the Canadian government presented to the Court a copy of the Consul's authority showing that his duties were in no way related to the management of the dam at issue in the suit. In the instant case, Argentina has clearly admitted that the "authority" of its consular officers extends to commercial matters (JA 11).

In Re Herman's Estate, 159 Minn. 274, 198 N.W. 1001 (1924) involved probate of a will of a foreign national, not commercial transactions, in which the Consul acted.

Because of the *commercial* status of the Consul and the fact that suit is being brought in a *commercial* activity, particularly when it is one in which the Consul participated, it has been suggested by many authorities that it is appropriate and proper to make the Consul

the recipient of process in commercial suits. Concluding that the limitations placed on the authority of a Consul to receive Service in connection with commercial suits is self-imposed and not compelled by international law, Dean Griffin states:

> "*There is nothing in a Consul's situation, status or limitation of authority by his own government which makes it improper or inappropriate for the receiving state [United States] to adopt a rule treating him as the agent of his government for the purpose of considering that notice to him shall be considered notice to his government of suits against it.*" Griffin, *Adjective Law and Practice in Suits Against Foreign Governments,* 36 Temple Law Quarterly 1, 10 (1962). (Emphasis added.)

See also, Niehauss, *Comments International Law—Sovereign Immunity—The First Decade of the Tate Letter Policy,* 60 Mich. Law Rev. 1142, 1152 (1962):

> "The requirements of service of process should be relaxed so that it would be easier to impart legal notice to a foreign sovereign. *The most logical solution would seem to be one that allows service of process on the Consul General who, presumably represents the commercial interests of his country abroad.*" (Emphasis added.)

This Court certainly has the ability to remove any imagined self-imposed limitation so as to enable the ever increasing number of private firms dealing with sovereign states to obtain redress in the courts.

Petitioner respectfully submits that the great distinction between sovereign authority and commercial authority—a distinction not considered or discussed by the Court below, sufficiently demonstrates that the cases cited by that court are non-controlling or persuasive to a de-

cision of this import. The Consul's main function of representing his nation's interests in a commercial suit, which he rendered in the instant suit, renders him appropriate to receive service of process in commercial cases.

IV.

THIS IMPORTANT AREA OF FEDERAL LAW IS IN NEED OF IMMEDIATE SUPERVISION AND CLARIFICATION BY THIS COURT.

Petitioner notes that since the enunciation of the Tate policy this Court has *never* passed upon the means by which that policy may be implemented. The area has many problems having important effects both upon our foreign commerce and foreign relations (as noted in the above discussion). This important area of federal law calls for the immediate application of this Court's judgment so that some guide lines may be established by which businessmen may obtain protection in their commercial dealings with foreign sovereigns. Our commercial trading with foreign states is increasing. This is the first case to come before this Court in which *in personam* jurisdiction is sought in a solely commercial matter involving the protection of the Tate Letter. Petitioner respectfully requests that this Court lend the weight of its authority to eliminate the tangled web left by the Court of Appeals' decision.

V.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE ILLINOIS AUTHORITIES.

Assuming, for purposes of argument only, that this Court should still consider that *in personam* jurisdiction was not obtained by serving the Argentine Consul, petitioner would still respectfully submit that the Court of

Appeals ignored appropriate decisions of the Illinois courts which are sufficient to establish jurisdiction over DGFM pursuant to extraterritorial service. Section 17 (a)(1) of Chapter 110, Ill. Rev. Stats., subjects foreign defendants to jurisdiction if they transact business within Illinois. The Illinois decisions are quite clear that that statute is to be construed in its full constitutional expanse. *Gray* v. *American Radiator & Sanitary Corp.*, 22 Ill. 2d 429; 176 N.E. 2d 761; 79 (1961); and Jenner & Tone, *Historical and Practice Notes to the Illinois Civil Practice Act*, 110 Smith-Hurd Ill. Annot. Stats. following Section 17 (1956) and (1962). DGFM, a department of the Argentine government which maintains a Consulate within Illinois, purposely rendered payments to petitioner in Illinois by means of a Letter of Credit deliberately established upon an Illinois bank invoking the protections of the Illinois law. DGFM further required that before payment could be rendered approval must be obtained from the Argentine Consul. That approval was in fact obtained from the Argentine Consul in Chicago at the Consulate in that city. The deliberate invoking of the protections of Illinois law is effective to obtain jurisdiction. *Hansen* v. *Denckle*, 357 U. S. 235 (1957). Under the announced intent of the Illinois statute the extraterritorial service should be deemed valid and the Court of Appeals decision reversed.

CONCLUSION.

The decision of the Court of Appeals that *in personam* service upon the Argentine Consul was not effective is an unduly restrictive and erroneous interpretation of the important Tate Letter. This decision frustrates the

policy of the Department of State of allowing suits against foreign states breaching their commercial obligations because it leaves no way to obtain jurisdiction against a foreign sovereign. Use of state *in rem* procedures conflict with the holding of this Court that foreign relations are subject to only federal law. Furthermore, the decision of the Court of Appeals in this important area of federal law is not supported by any authority. This important area of federal law is in need of clarification.

Alternatively, the service made upon DGFM in Buenos Aires was effective under state law.

For the foregoing reasons, petitioner respectfully requests that this Honorable Court grant a Writ of Certiorari to review the decision of the Court of Appeals for the Seventh Circuit

Respectfully submitted

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